

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Jessica Ortiz,

Plaintiff,

Vs.

No. 1:18-cv-00636

The Hartford,

Defendant.

**COMPLAINT UNDER ERISA FOR RECOVERY OF
DISABILITY INSURANCE BENEFITS**

COMES NOW, Plaintiff, Jessica Ortiz, by her attorney, Jeffrey B. diamond, and for cause of action against the Defendant, states:

1. Plaintiff is a resident of Bernalillo County, New Mexico and the Defendant engages in business in the State of New Mexico. This action is brought pursuant to 29 USC § 1132, §502(a) of the Employee Retirement Income Security Act of 1974. Jurisdiction and venue are proper in this Court pursuant to Subsection (e)(1) of 29 USC § 1132.

2. Plaintiff was employed by T-Mobile USA, Inc., for several years until becoming disabled on or about November 24, 2013 as the direct result of a combination of severe mental and physical illnesses consisting of major depressive disorder, degenerative joint disease, fibromyalgia, cervical radiculopathy, lumbar radiculopathy, and disabling physical effects resulting there from. Plaintiff is crippled from her multiple impairments. Plaintiff received LTD benefits, after a non-payable Elimination Period, from February 22, 2014 through February 21, 2016.

3. Defendant, The Hartford, issued a policy of long-term disability insurance benefits for the benefit of the Plaintiff, who made claim therefore as insured ID

9004405484 under claim number GLT 402610, and provided sufficient proof of loss, medical evidence, health history, and other relevant, necessary, and material evidence in support of the said claim, including releases for the Defendant to obtain information from medical and other sources, so as to qualify for and be entitled to the receipt of benefits under such disability income policy.

4. Plaintiff was entitled under the plan to a disability waiver of premium for life and health insurance coverage which the Defendant has wrongfully denied.

5. Defendant established, jointly, the group benefits plan as an employee benefit plan established and qualified in accordance with the provisions of the Employee Retirement Income Security Act, 29 USC § 1001 et seq.

6. That at all times material hereto; the Plaintiff obtained and continued her employment in reliance upon the provision to the Plaintiff of disability income insurance benefits in the event she became disabled and became insured under this LTD policy effective 6/1/2013.

7. Beginning on November 24, 2013, Plaintiff became disabled due to pregnancy and hyperemesis, Fibromyalgia and other impairments and unable to continue working for T-Mobile USA, Inc., or any other employer, in any type of employment, and thus became eligible and entitled to benefits under the disability income policy for both short and long term disability benefits.

8. Concurrently with applying to the Defendant for her disability income benefits, the Plaintiff also applied for, Social Security Disability Insurance Benefits and by reason of her disability and was awarded Social Security Disability Insurance Benefits in a Fully Favorable Decision of an Administrative Law Judge on July 6, 2017.

9. The Plaintiff made due and proper application for disability benefits under the subject plan, and the Defendant has improperly, unlawfully, and in derogation of the subject disability plan, arbitrarily, capriciously, in bad faith, negligently, and otherwise wrongfully denied the Plaintiff the benefits to which she was entitled.

10. Plaintiff timely filed her claim for benefits, and the subject claim for benefits was improperly denied by the Defendant on September 6, 2016. Although the Plaintiff made timely appeals and requests for reconsideration of the denials both prior to and after September 6, 2016, it would be futile for the Plaintiff to engage in further administrative appeals and reconsideration, and thus, the Plaintiff has exhausted her administrative remedies.

11. That as a direct result of the arbitrary and capricious, wrongful, unlawful, improper, negligent and bad faith refusal of the Defendant to pay the Plaintiff disability benefits pursuant to the subject plan, the Plaintiff has suffered financial loss and hardship, and deprivation of contractual benefits under the disability plan, and the Court should award the Plaintiff a judgment against the Defendant for all disability insurance benefits to which the Plaintiff is entitled under the plan, together with interest thereon, reasonable attorney fees, costs of suit, and such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff requests the Court award her damages against the Defendant for all disability income benefits due Plaintiff since February 22, 2016, together with accrued interest thereon, costs, reasonable attorney fees, and such other and further relief as the Court deems just in the premises.

Respectfully submitted,

JEFF DIAMOND LAW FIRM

JEFFREY B. DIAMOND
P.O. BOX 1866

323 W. Mermod
Carlsbad, NM 88220
(575) 885-3500
jdiamond@jeffdiamondlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/Jeffrey B. Diamond (07/05/18)
Jeffrey B. Diamond